IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 1267 OF 1998
In
SPECIAL CIVIL APPLICATION NO. 2762 OF 1998
With
CIVIL APPLICATION NO.9842 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARSHADKUMAR B. VASIA — Appellant (s)
Versus
GUJARAT STATE FERTILIZERS & CHEMICALS LTD (FIBRE UNIT) & ANR. - Respondent(s)

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Appearance :
MR. MUKUL SINHA for Appellant No(s).: 1.
MR. K.S.NANAVATI, Sr.Counsel for
M/S.NANAVATI ASSOCIATES for Respondent No(s).: 1.
RULE SERVED for Respondent No(s).: 2.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG &
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 23/06/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Present is a Letters Patent Appeal under Clause-15 of the Letters Patent by the workman being aggrieved by the judgement dated 21st August, 1998 passed in Special Civil Application Nos.2766 and 2762 of 1998.

2. It is to be seen that on a written complaint made by as many as four officers of the Establishment, departmental proceedings were started against the present workman; despite number of opportunities to him, he did not appear before the Inquiring Authority, therefore, *ex parte* inquiry was conducted against him. All the four officers, who joined in the complaint, were examined and after recording the evidence, the Inquiry Officer recorded that the misconduct to the tune that the delinquent abused the officers and made physical assault on him, was proved. The Establishment,

thereafter, terminated the services. Being aggrieved by the said action, the present appellant took up the matter before the Labour Court. In the Labour Court, he made an application that he was not challenging the correctness, validity and propriety of the inquiry proceedings, but, was challenging the correctness of the findings and the quantum of punishment. After hearing the parties, the Labour Court observed that as one of the eye witnesses was not examined and as there were material contradictions in the statements of the witnesses, which were recorded by the Inquiry Officer, order of punishment of termination could not be issued. Being aggrieved by the said order, the Establishment filed a Special Civil Application before this Court. The learned single Judge, after hearing the parties, came to the conclusion that there was no scope for the Labour Court to enter into the factual disputes, especially, on the facts that the alleged incident was proved or not. He also found that the approach of the Labour Court was illegal and was absolutely perverse. Setting aside the findings

recorded by the Labour Court, the learned single Judge observed that the findings recorded by the Inquiry Officer was justified and in the given case, there was no scope for interference on the question of punishment. Being aggrieved by the said findings recorded by the learned single Judge, the appellant-workman is before this Court.

3. Mr.Mukul Sinha, learned Counsel for the appellant, took us through the chargesheet, the reply, the other documents, including copy of the complaint made by the four officers, copy of the complaint made by the victim to the officer and copy of the First Information Report lodged by the victim with the police, and asked us to reappreciate the entire evidence. He submitted that in view of the material contradictions in the statements of the witnesses and the conduct, which was exhibited by the victim all through, it would clearly appear that present was a concocted matter. He, however, submitted that hot exchange of words between the employee and the officers being ordinary wear and tear

of life and the services, should not lead to the conclusion that the employee committed some wrong or misconduct wanting dismissal from his settled life.

4. On the other hand, learned Counsel for the respondent-Establishment submitted that the learned single Judge did not reappreciate the evidence, rather he had considered the jurisdiction of the Labour Court and observed that the Labour Court was unjustified in interfering with the findings on trivial and small issues. The learned single Judge had observed that the Labour Court had no jurisdiction to interfere in the matter.

5. Placing reliance upon a judgement of the Supreme Court in the matter of ***T.Prem Sagar vs. M/s.Standard Vacuum Oil Company, Madras & Ors.***, ***AIR 1965 SC 111***, Mr.Sinha submitted that if the High Court comes to a conclusion that an error of law is floating on the surface of the record, then, instead of entering into examining the evidence available, it should refer the

matter back to the Tribunal, which is assigned the work under the law. His further submission is that in the present matter, the High Court was absolutely unjustified in reappreciating the evidence.

6. At this stage, we think that we must record a particular incident, which took place in the open court, when Mr.Nanavati was submitting that particular was the statement of the victim before the Inquiry Officer, Mr.Sinha submitted that the said documents were not before the learned single Judge. To this, Mr.Nanavati submitted that the statement was urged before the learned single Judge, but, Mr.Sinha took an exception to this statement that if the document was not on the record, how could the learned single Judge know about the particular fact. The manner in which a sarcastic remark was made, was really offending. We take an exception to it. It is not expected of a counsel of Mr.Sinha's eminence that without going through the record, such loose comments are made against the Judges of this Court. It is to be noted

that the said statements are forming part of the record.

7. Placing reliance upon a judgement of the Supreme Court in the matter of ***Cholan Roadways Ltd. vs. G.Thirugnanasambandam***, ***2005(3) SCC 241***, Mr.Nanavati submitted that the question of standard of proof should be left to the discretion of the Inquiry Officer and if some evidence to support the findings is available, then, the Labour Court would have no jurisdiction to upset the findings simply on the ground that a particular witness was or was not examined. He also placed his reliance upon two judgements of the Supreme Court in the matter of ***M.P. Electricity Board vs. Jagdish Chandra Sharma***, ***2005(3) SCC 401,*** and ***Mahindra And Mahindra Ltd. vs. N.B.Narawade***, ***2005(3) SCC 134***, to contend that if the misconduct, as alleged, is proved, then, dismissal would be the only appropriate punishment.

8. In the present matter, it is to be seen that the

four officers, who had joined in the complaint, were examined before the Inquiry Officer; copy of the complaint made by those four officers, copy of the complaint made by the victim and the First Information Report lodged by the victim were produced before the Inquiry Officer. The statements of those four witnesses were absolutely uncontroverted because the present appellant did not choose to take part in the departmental proceedings; he did not even appear before the Inquiry Officer to give his own statements or even to contend that the allegations made against him were absolutely unjustified or wrong. The three officers, other than the victim, had supported the first incident clearly stating that the delinquent entered in the office, misbehaved with the victim and threatened him of dire consequences and had intimidated him of death. These statements, if are uncontroverted, there is no reason to hold otherwise. The victim, in his statement, while supporting the first incident, had clearly stated that physical assault was made on him and two fistical blows were given on his

face. Mr. Sinha, to make a capital out of this, wanted to say that at some place, he had said that an assault was made, while at the other place, he had said that three blows were given on his face. We are unable to appreciate this argument. The question is not the number of blows, but, the question is whether intimidation was extended to the officer and whether physical assault was made upon him.

9. The Inquiry Officer, after going through the entire evidence, recorded number of findings, but, the same were disturbed and upset by the Labour Court only on the ground that Rupen Amin, who was an eye witness to the incident, was not examined.

10. In the matter of ***Cholan Roadways Ltd.*** *(supra),* in an identical situation, the Supreme Court has observed that non-examination of a particular witness would not make any material difference in the matter if the facts are even otherwise proved and the statements even otherwise can be relied upon.

The Supreme Court has further observed that the question of extent of proof would always depend upon the reliability of the witnesses i.e. the quality of evidence and not the quantity of evidence.

11. So far as the judgement in the matter of ***T.Prem Sagar*** (*supra*) is concerned, there the Supreme Court has observed that in a case where the evidence has not been properly appreciated, the High Court should not take upon itself the task of reappreciating the evidence, but, in the present matter, the High Court did not reappreciate the evidence, it had simply observed that the approach of the Labour Court was *per se* illegal and perverse. Where the perversity is cleared off, then, the original statements would float on the surface and the findings, which are suppressed by the perverse findings, would again shine. In the present matter, the learned single Judge had simply observed that the approach of the Labour Court was absolutely perverse and under such circumstances, he had set aside the findings recorded by the Labour

Court.

12. In other two matters referred to above, the Supreme Court has observed that in a case where an employee tends to misbehave with the senior officers and makes an assault on them, then, in case the allegation of assault is proved, the only punishment should be of termination/dismissal. The Supreme Court has observed that an employee's behaviour *qua* the senior officer should be mannerful and if etiquettes and courtesies are lost, then, no establishment would work satisfactorily.

13. In the present matter, in view of the findings recorded by the Inquiry Officer, we are of the view that no mercy was called for, the termination should be the only punishment. We find no reason to interfere in the matter. The appeal is dismissed.

14. In view of dismissal of the main appeal, the Civil Application stands disposed of. Notice is discharged.

(***R.S.Garg, J***.)

(***Ravi R.Tripathi, J.***)

*kamlesh**